

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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CC:FIP:B03 – PLR-104663-08
Date:
May 23, 2008

In re:

LEGEND

Fund	=
State X	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=

Dear

This responds to a letter dated January 30, 2008, submitted on behalf of Fund. Fund requests that its election under § 855(a) of the Internal Revenue Code to treat

dividends distributed after the close of a taxable year as having been paid during that taxable year be considered timely filed pursuant to § 301.9100-3 of the Procedure and Administration Regulations.

FACTS

Fund is a State X trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq., as amended, as a diversified, open-end management investment company. Fund has elected to be treated as a regulated investment company (RIC) under Subchapter M of the Code. Fund files its federal income tax returns on a fiscal year basis with a year end of September 30.

Fund hires an outside company (Administrator) to be responsible for providing the tax calculation workpapers, reviewing Fund's tax returns and extension requests, and arranging for their timely execution and filing. An accounting firm actually prepares the tax returns, including extension requests for Fund.

Fund's federal income tax return (1120-RIC) for the taxable year ended Date 1 was due on Date 2. Fund represents that it timely filed a Form 7004 to obtain an automatic six-month extension of time to file Fund's federal income tax return, moving the due date for Fund's Form 1120-RIC to Date 3. Fund declared a dividend on Date 2, and paid that dividend on Date 4, which is within 12 months following the close of the tax year ended Date 1. Fund also represents that consistent with Fund's prior distribution practices, Fund intended to make an election to apply the "spill-back" provisions of § 855(a) of the Code to the dividend paid on Date 4.

After the Form 7004 was filed, but prior to the due date of Fund's Form 1120-RIC, Fund changed Administrators. During the confusion that accompanied the change in Administrators, Fund failed to timely file its federal income tax return. Fund has represented that through inadvertence, Fund failed to file its Form 1120-RIC prior to the Date 3 due date.

On or before Date 5, Fund filed its federal income tax return late, including the election under § 855(a), for the taxable year ended Date 1. Fund subsequently submitted a request for relief under § 301.9100-3 that its election under § 855(a) of the Code to treat dividends distributed after the close of a taxable year as having been paid during that taxable year be considered timely filed.

Fund makes the following additional representations:

1. The request for relief was filed by Fund before the failure to make the regulatory election was discovered by the Service.

2. Granting the relief will not result in Fund having a lower tax liability in the aggregate for all years to which the regulatory election applies than that Taxpayer would have had if the election had been timely made (taking into account the time value of money).

3. Fund did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Fund requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Fund did not choose to not file the election.

LAW AND ANALYSIS

Section 855(a) of the Code provides that, if a RIC:

(1) declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period for any extension of time granted for filing such return), and

(2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration, the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b), (c) and (d).

Section 1.855-1(b)(1) of the Income Tax Regulations sets forth the method of making the election and provides that the election must be made in the return filed by the RIC for the taxable year.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) set forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections

that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

HOLDING

Based upon the facts presented and representations made by Fund, we hold that Fund has demonstrated good cause for the granting of relief under § 301.9100-3. Accordingly, Fund will be treated as having made a timely election under § 855(a) of the Code on its federal income tax return that was filed on or before Date 5 for the taxable year ended Date 1.

No opinion is expressed as to whether Fund's tax liability is not lower in the aggregate for the year to which the election applies than Fund's tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director will determine Fund's tax liabilities for the year involved. If the director determines that Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of Fund's election under § 855(a) of the Code. This ruling does not relieve Fund from any penalty that it may owe as a result of its failure to file its federal income tax return on time. Except as specifically ruled upon above, no opinion is expressed or implied as to any federal excise or income tax consequences regarding Fund. In particular, no opinion is expressed or implied whether Fund qualifies as a RIC that is taxable under subchapter M, part 1 of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Alice M. Bennett
Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes

cc: